TRIKKON SDN BHD A

v.

MAHINDER SINGH DULKU

HIGH COURT MALAYA, PENANG B
CHEW SOO HO JC
[CIVIL APPEAL NO: 16-9-2003]
26 NOVEMBER 2009

LEGAL PROFESSION: *Advocates and solicitors - Misconduct - Allegation of - Failure to remit a breakdown bill of charges and taxation of costs after order of court - Whether there was a breach of the Legal Profession Act 1976 - Withholding files from appellant - Legal Profession (Practice and Etiquette) Rules 1978, r. 55 - Whether breached - Whether Disciplinary Board erred in law - Whether there were compelling reasons to interfere with decision of Disciplinary Board* C D

This was an appeal by the appellant against the decision of the Bar Council's Advocates and Solicitors Disciplinary Board dismissing the appellant's complaint against the respondent on the ground that there was no merit in the complaint. The appellant had appointed the respondent to act for them in a proceeding between the appellant as the claimant and the Penang Development Corporation (PDC). The two matters which the appellant was complaining against the respondent were (i) the respondent had withheld and refused to return the files involving appellant's case for which the respondent was solicitor acting for the appellant *vide* a High Court originating summons and Court of Appeal civil appeal and (ii) the respondent had failed to remit a breakdown bill of charges and failed to carry out taxation of costs four years after the order of the court. The issue fundamentally was whether the respondent had violated any of the disciplines under the Legal Profession Act 1976 ("the LPA 1976") and the Legal Profession (Practice and Etiquette) Rules 1978 ('the Rules') to warrant disciplinary action against him. E F G

Held (dismissing the appeal with costs): H

(1) Pursuant to the appellant's letter dated 14 August 1997 to the respondent, appellant had confirmed an agreement with the respondent that the respondent was entitled to the taxed costs in respect of the originating summons and the civil appeal being part of the respondent's fees in respect of these two I

matters. By the said agreement coupled with a subsequent oral agreement, appellant ought to be satisfied that their fees had been settled by the costs that they had agreed to be given to the respondent as their fees in handling the OS in the High Court and the civil appeal in the Court of Appeal. The purpose of a client asking for the bill of charges or a breakdown bill of charges from his solicitor was none other than knowing the actual bill or the actual sum to be paid to enable him to make payment or to rectify whatever error before payment to his solicitor. If payment was no longer the question, as in this case, there was no reason why the appellant should insist to obtain the breakdown bills from the respondent again. Based on the aforesaid agreement with the appellant which were unequivocal, the respondent was not obliged to provide the appellant with the bills as requested bearing in mind that the appellant could not revoke an agreement unilaterally. Consequently there was no breach of the LPA 1976 or the Rules by the respondent. (para 23)

(2) The respondent had been discharged by the appellant after the conclusion of the civil appeal in the Court of Appeal and the respondent had not been paid his fees which were to be derived from the taxed costs in the two cases that he had acted for the appellant and concluded *vide* the agreement. It was thus clear in law that respondent was entitled to a *lien* to retain the papers in the two files for taxation of costs still due to him after he had been discharged by the appellant as solicitor and when taxation had not been concluded. In the circumstances there was no obligation for the respondent to return the two files to the appellant. Hence what the respondent did *ie*, withholding the two files for the purposes of securing his costs whether by taxation or through a settlement ultimately was within the permissible purview of the law and could not be held to have breached r. 55 thereof. The respondent could not be held to have breached r. 55 to justify any disciplinary action against him as complained by the appellant. (paras 23 & 30)

(3) The Board had considered and determined that there was no merit in the appellant's complaint. The discretion was certainly vested on the Board as to how much they feel necessary to advance their grounds or otherwise for their decision or order. This court could not intrude into the arena of the Disciplinary Board to usurp their functions. The Disciplinary Board must be given the free hand to decide what was right and what was

wrong of their own members. It is trite law that an appeal is a rehearing and even if the Board does not give any reason for arriving at a stated decision or order, this does not vitiate the power of this court to hear the appeal and arguments of both parties and to come to a finding whether the Board had arrived at a just decision or otherwise. When the Disciplinary Board concluded that there was no merit in the appellant's complaint, the Disciplinary Board did not err in law and in fact in coming to that decision. There were no compelling reasons to interfere with the decision of the Disciplinary Board. (para 32)

Case(s) referred to:

Au Kong Weng v. Bar Committee, Pahang [1980] 1 LNS 4 FC ***(refd)***

Gana Muthusamy v. Tetuan LM Ong & Co [1998] 4 CLJ 878 CA ***(refd)***

Hughes v. Hughes [1958] Probate Division 224 CA ***(refd)***

In re Faithfull, And In re London, Brighton, And South Coast Railway Company [1868] Equity Cases Vol VI 325 ***(refd)***

Marzaini Zainuddin v. Majlis Peguam Malaysia [2007] 10 CLJ 339 HC ***(refd)***

Trikkon Sdn Bhd v. Dato' Mahinder Singh Dulku [2008] 1 LNS 786 HC ***(refd)***

Legislation referred to:

Legal Profession Act 1976, ss. 100(1), 103E(3)

Legal Profession (Practice and Etiquette) Rules 1978, r. 55

Legal Profession (Amendment) Act 2006, ss. 33, 35(1)

For the appellant - R Devadason; M/s Devadason & Devadason

For the respondent - Hardeep Singh Jessy; M/s Mahinder Singh Dulku & Co

Reported by Suhainah Wahiduddin

JUDGMENT

Chew Soo Ho JC:

[1] This appeal has been dismissed on 26 November 2009 and I now append below my judgment for dismissing this appeal.

Preliminary Issue

[2] This is an appeal by the appellant against the decision of the Bar Council's Advocates & Solicitors Disciplinary Board dismissing the appellant's complaint against the respondent on ground that there was no merit in the complaint.

[3] At the onset of the hearing of this appeal on 31 October 2009, learned counsel for the appellant, Mr R Devadason had raised a preliminary issue whether this appeal is to be heard by three judges as provided in the pre-amended s. 103E of the Legal Profession Act 1976 since this case occurred before the coming into force of the new amendment or that the appeal shall be heard before a single judge of the High Court according to the amended s. 103E. As it appeared that both parties were not ready to submit on this issue, this court granted another date for both parties to submit on this issue and thereafter if this court were to hold that a single judge can hear this appeal, the appeal shall proceed on the same date which is fixed on 26 November 2009.

[4] On 26 November 2009, learned counsel for the respondent Mr Hardeep Singh Jessy, submitted that the provision of s. 35 Legal Profession (Amendment) Act 2006 Act A1269 published in the Gazette on 14 September 2006, has answered the issue raised. Section 35 provides:

> 35. (1) *Where on the date of coming into operation of this Act appeals under section 103E were pending before the High Court or the Federal Court, as the case may be, the proceedings shall be continued under and in conformity with the provisions of section 103E as amended by this Act*; but where on the date of coming into operation of this Act any appeal was in the course of being heard, or had been heard but no order or decision had been made on the appeal, the proceedings shall continue under the provisions of the principal Act applicable to those proceedings immediately before the date of coming into operation of this Act.
>
> (2) ... (emphasis added)

[5] The provision of s. 35(1) above is amply clear and indeed answered the preliminary issue squarely. Since this appeal is pending and had not been heard or part-heard, the new s. 103E substituted *vide* s. 33 of the Legal Profession (Amendment) Act 2006 is to apply. Section 103E (3) provides:

> 103E. ...
>
> (3) The appeal shall be fixed for hearing before a single Judge of the High Court.
>
> ...

[6] Hence, there is no issue that I am incapacitated to sit alone to hear this appeal.

[7] Learned counsel for the appellant also informed this court that he did not wish to pursue the matter any further.

The Appellant's Complaint To The Bar Council

[8] The appellant wrote a letter dated 24 June 1998 to the Advocates & Solicitors Disciplinary Board of the Bar Council Kuala Lumpur complaining against the respondent on the matters which are reproduced below:

> (i) Mahinder Singh Dulku is holding and has refused to return back our files on matters he acted to us ie, Penang High Court Originating Summons No. 231131-93 and Court of Appeal Civil Appeal No. P-02-265-95.
>
> We are all the way prepared to pay Mr. Mahinder Singh Dulku for his charges and have terminated his services and we have many times demanded that our files be returned to us so as to enable us to appoint other solicitors to act for us (copies of our letters to Mr. Mahinder Singh Dulku dated 14 August 1977, 15 May 1998 and 1 May 1998 and letters from Mr. Mahinder Singh Dulku dated 29 December 1997 and 31 December 1997 enclosed herewith). We have requested to Mr. Mahinder Singh Dulku to send us a breakdown bill of his charges as in our letter as enclosed but Mr. Mahinder Singh Dulku has failed to do so since 24.2.94 and 24.6.97 ie, dates of the Court Orders.
>
> Mr. Mahinder Singh Dulku has also failed to carry out the taxation of costs even though the Orders of Court were made more than 4 years ago as stated in our enclosed letter with many reminders.
>
> Mr. Mahinder Singh Dulku has acted very highhandedly and unethically by both not carrying out the taxation and giving us his breakdown bill of charges.

[9] The Advocates & Solicitors' Disciplinary Board had *vide* its letter dated 22 May 2003 informed the appellant that it had considered the complaint and pursuant to s. 100(1) of the Legal Profession Act 1976 (as amended) had at its meeting held on 9 May 2003 determined that there was no merit in the appellant's complaint and accordingly, the board had dismissed the aforesaid complaint; hence this appeal.

A **Appellant's Submission**

[10] Appellant submitted through their written submission that at the time when the complaint was lodged with the disciplinary board, the respondent had failed to prepare the bill of cost for taxation of
B the two cases ie, the Penang High Court case and the appeal to the Court of Appeal. In the meantime, the appellant had been requesting for the return of the files in the said two cases and the appellant was prepared to pay the respondent his fees as stated in his letter of complaint. It was submitted that pursuant to r. 55 of
C the Legal Profession (Practice and Etiquette) Rules 1978 which reads:

> Except by way of securing his first to *lien*, an advocate and solicitor shall not otherwise withhold the client's papers to the detriment of the client,
>
D
> it is wrong for the respondent to withhold the appellant's files.

[11] Referring to appellant's letter dated 31 December 1997 at p. 58 of the Appeal Record which was addressed to the respondent, the appellant had expressed that the respondent had failed to carry
E out the taxation for more than six months and had failed to do so despite numerous reminders. Thus they had no alternative but to cancel the agreement and terminate all services of the respondent and henceforth, they requested for all files pertaining to the matters to be returned to them immediately. They also mentioned that they
F were prepared to pay the respondent for the work done of which the bill had been requested by them for months. The respondent replied *vide* his letter dated the same date (p. 59 of the Appeal Record) denying the appellant's allegation of the delay and the request to bill them. Appellant submitted that respondent stated in this letter
G "the decision to tax our bill remain with us. The taxed costs will not go to you but will be ours absolutely to account of our fees. In the circumstances, we will not return to you the files. With this reply we would not enter any correspondence with you." Appellant was prepared to pay the respondent provided the respondent gave a
H detailed bill but refuted the sum of RM312,993 of fees as claimed by the respondent to be ridiculous and of course, the appellant did not pay that amount.

[12] In his further oral submission, learned counsel Mr
I R Devadason reiterated the issue of taxation of costs which the respondent had taken no action of and that the costs asked for by the respondent was excessive. On the agreement *vide* appellant's letter at p. 57 of the Appeal Record, learned counsel for the

appellant submitted that the appellant should be allowed to testify to determine the truth of its contents as the appellant is now saying they are tricked into giving p. 57. On the decision of the disciplinary board, learned counsel contended that the disciplinary board did not give any reason and also did not apply their mind to arrive at a fair decision.

Respondent's Submission In Reply

[13] The respondent replied and contended *vide* his written submission that in view of the written agreement as to the agreed fees in respect of the above two cases which had been successfully argued and concluded in favour of the appellant, the respondent would not return the cause papers to the appellant as the respondent needed them for the taxation of costs awarded by the High Court and the Court of Appeal. In other words the respondent had a *lien* on the papers pending taxation. The written agreement as to the fees in respect of the above-mentioned cases is contained in the appellant's letter dated 14 August 1997 (p. 10 of the Appeal Record which is the same with p. 57) which reads:

> Re: (1) Penang High Court
> Originating Summons No. 24-1131-93
> Trikkon Construction Sdn Bhd vs. Penang Development Corporation
>
> (2) Court of Appeal
>
> Civil Appeal No. P-02-267-95
>
> Penang Development Corporation vs. Trikkon Construction Sdn Bhd
>
> The above matters refer.
>
> This is to confirm our agreement that you are entitled to taxed costs of the above matters being part of your fees in respect of the above-mentioned matters.

[14] In the light of this clear term in the agreement that the respondent replied the appellant's letter dated 31 December 1997 *vide* his letter dated the same date (referring to pp. 58 and 59 or pp. 11 and 12 of the Appeal Record which are the same). respondent contended that appellant had wrongfully terminated the said agreement *vide* their letter at p. 58 of the Appeal Record. He further contended that appellant had also wrongfully terminated respondent's services by letter dated 19 September 1997 (p. 53 of

A the Appeal Record). As regards the appellant's instruction to forward all documents pertaining to the arbitration case between the appellant and Penang Development Corporation, respondent had duly returned the file relating to this matter to the appellant's new solicitors *vide* his letter dated 25 September 1997 (p. 54 of the B Appeal Record).

[15] In view of the above facts, respondent submitted that the appellant's allegations contained in the third paragraph of their letter of reply to the disciplinary board dated 20 August 1998 are patently C false (p. 85 of the Appeal Record).

[16] In summary, respondent contended that what was outstanding after he was wrongfully discharged as appellant's solicitors was for him to tax the costs in accordance with the written agreement between him and the appellant which taxed costs were agreed to be D part of the fees payable to him that would otherwise have been payable personally by the appellant to him. For the purposes of taxation of costs, he needed the files which he had a *lien* to them.

[17] In his oral reply, Mr Hardeep Singh Jessy, counsel for the E respondent submitted that in so far as the two files are concerned, what is left is the costs and the appellant has no more interest therefrom. On p. 57, the agreement that respondent was entitled to the taxed costs as part of his fees, learned counsel submitted that the respondent has relied on that agreement and it would be clearly F unjust to state otherwise as the doctrine of estoppel would apply. In the absence of fraud and misrepresentation, learned counsel submitted that the appellant's submission that the appellant was tricked into giving such a letter ought to be ignored as it is an after-thought. On the disciplinary board's decision, learned counsel G submitted that there is no requirement in law that the disciplinary board must give their grounds.

The Law

H **[18]** In dealing with appeal of this nature involving the decision of the disciplinary board of the Bar Council against a member of its own profession, the courts have consistently held that it is best for the legal profession entrusted with the supervision of advocates and solicitors to decide on the fate of its own members as members of I the same profession ought to know and appraise better the conduct and the standard required of their members in the legal profession in the discharge of their duties and function as an advocate and solicitor; see *Trikkon Sdn Bhd v. Dato' Mahinder Singh Dulku* [2008]

1 LNS 786 where His Lordship Ghazali Cha J had cited the principles of law and the approach as well as the role of the court in dealing with cases involving the decisions of the said disciplinary board as laid down in *Gana Muthusamy v. Tetuan LM Ong & Co* [1998] 4 CLJ 878 (CA); *Au Kong Weng v. Bar Committee, Pahang* [1980] 1 LNS 4 and *Marzaini Zainuddin v. Majlis Peguam Malaysia* [2007] 10 CLJ 339. Save as to concur with the law cited by His Lordship Ghazali Cha, I shall not repeat them herein except to emphasize that unless there are most compelling reasons for the court to do so, the decision of the disciplinary board should not have been interfered with.

The Issues

[19] From the letter of complaint reproduced above, there are two matters which the appellant was complaining against the respondent. They are:

(1) The respondent withheld and refused to return the files involving appellant's case for which the respondent was solicitor acting for the appellant *vide* Penang High Court Originating Summons No. 23-1131-93 and Court of Appeal Civil Appeal No. P-02-265-95; and

(2) The respondent failed to remit a breakdown bill of charges and failed to carry out taxation of costs four years after the order of the court.

[20] The issue fundamentally is whether the respondent has violated any of the disciplines under the Legal Profession Act 1976 (hereinafter referred to as "the LPA 1976) and the Legal Profession (Practice and Etiquette) Rules 1978 (hereinafter referred as "the Rules") to warrant disciplinary action to be taken against him.

Findings

[21] The background facts of this case as can be seen in the respondent's letter at pp. 14 and 16 of the Appeal Record show that sometime in 1988, the appellant had appointed the respondent to act for them in an arbitration proceeding between the appellant as the claimant and the Penang Development Corporation (PDC) as the respondent therein. Nineteen sessions had gone on and counsel for PDC then requested the arbitrator to resign and the arbitrator did on 31 March 1992. Respondent subsequently had made several attempts to appoint another arbitrator but failed. An application was then filed in the court to appoint an arbitrator *vide* Originating

A Summons No. 23-1131-93. PDC opposed this application. After several hearings, the High Court granted the application with costs. PDC appealed to the Court of Appeal against the decision of the High Court. After two days of hearing of this appeal (CA No P-02-267-95), the Court of Appeal in a reserved judgment dismissed the
B appeal with costs. PDC did not appeal to the Federal Court. Thus, the matter was concluded; the arbitration could proceed or continue. What was left was the costs of the two court proceedings and the respondent's fees. Sometime in June 1997, after a preliminary hearing with the new arbitrator, respondent was discharged as
C solicitor. Appellant's letter discharging the respondent was dated 19 September 1997. Upon the appellant's request, respondent had handed over all relevant papers relating to the said arbitration case to the appellant's new solicitors within four days of the request *vide* his letter dated 25 September 1997. As to the respondent's fees, an
D agreement in writing was concluded between both the appellant and the respondent whereby the appellant agreed that the respondent was entitled to the taxed costs of the aforesaid Originating Summons (OS) and the Civil Appeal as part of his fees in respect of these two matters. Respondent alleged both parties also agreed orally that
E other than the taxed costs or agreed costs *in lieu* of taxation, respondent would not claim any more fees in respect of the OS and the Civil Appeal. Subsequently, respondent received a letter dated 31 December 1997 from the appellant unilaterally cancelling the agreement dated 14 August 1997 (p. 57 of the Appeal Record).
F Respondent replied and held that the agreement was still binding as he did not agree to the revocation or cancellation. Respondent averred that he had commenced negotiations with solicitors for PDC for the payment of costs *in lieu* of taxation and was still negotiating with them.

G

[22] From the above facts and in particular the appellant's letter dated 19 September 1997 (at p. 53 of the Appeal Record) thanking the respondent for his past services and informing the respondent of the name of their new solicitors as well as requesting the
H respondent to forward all documents pertaining to the said arbitration matter to their new solicitors, and respondent's letter dated 25 September 1997 (pp. 54-56 appeal Record) forwarding all relevant documents to the appellant's new solicitors, this pertinent fact shows that the respondent did not withhold the relevant
I documents to bar or delay the appellant and their new solicitors from proceeding or continuing with the arbitration proceeding. For that reason, it is clear that the respondent had not withheld all the

relevant papers relating to the arbitration to the detriment of the appellant under r. 55 of the Rules. As far as the files involving the OS and the Civil Appeal are concerned, it is a fact that they have been concluded except for the costs that had been awarded by the High Court and the Court of Appeal respectively, which are yet to be taxed or negotiated and agreed upon *in lieu* of taxation. Pursuant to the appellant's letter dated 14 August 1997 (p. 57 Appeal Record) to the respondent, appellant had confirmed an agreement with the respondent that the respondent was entitled to the taxed costs in respect of the OS and the Civil Appeal being part of the respondent's fees in respect of these two matters. Respondent further said in his letter of explanation to the disciplinary board dated 4 August 1998 (pp. 14-16 Appeal Record) that other than the taxed costs or agreed costs *in lieu* of taxation, he had agreed with the appellant orally that he would not claim any more fees from the appellant in respect of the same two matters. On these two facts, I find that the issue of costs whether they are to be taxed or to be agreed upon between the respondent and the solicitors acting for PDC becomes a matter entirely for the respondent to decide and there is no further concern of the appellant to ask for bill of taxation and the like from the respondent. It is unattainable for the appellant to submit now that its director had been tricked to give that agreement *vide* p. 57 of the Appeal Record. There is no evidence of any fraud or misrepresentation. The appellant knew what had been expressed in the letter p. 57 and cannot be allowed to resile from their agreement unilaterally. By the said agreement (p. 57) coupled with the subsequent oral agreement, appellant ought to be satisfied that their fees had been settled by the costs that they had agreed to be given to the respondent as their fees in handling the OS in the High Court and the Civil Appeal in the Court of Appeal. The purpose of a client asking for the bill of charges or a breakdown bill of charges from his solicitor is none other than knowing the actual bill or the actual sum to be paid to enable him to make payment or to rectify whatever error before payment to his solicitor. If payment is no longer the question, as in this case, I see no reason why the appellant should insist to obtain the breakdown bills from the respondent again. I would agree that basing on the aforesaid agreements with the appellant which I find to be unequivocal, the respondent was not obliged to provide the appellant with the bills as requested bearing in mind that the appellant could not revoke an agreement unilaterally. Appellant had also refuted the bills of respondent's fees amounting to RM312,993 (pp. 82-83 Appeal Record). However, this is a bill for the outstanding legal

fees in respect of the 19 files stated therein. There is no evidence that these 19 files are or any one of them is in relation to this arbitration matter or the OS or the Civil Appeal relevant to this appeal. It is therefore irrelevant and cannot be contended to be the excessive fees demanded by the respondent as his fees for the said OS and the Civil Appeal. In the circumstances, I find no merit in the appellant's complaint on this issue against the respondent for the latter's failure to forward to them a breakdown bill of the respondent's charges or to carry out the taxation in court for simple reason that the appellant's fees for the two matters were agreed upon to have been settled by the costs, whatever the amount they may be. Consequently, there is no breach of the LPA 1976 or the Rules by the respondent.

[23] It is a fact that the respondent had kept the two files pertaining to the High Court OS and the Civil Appeal to the Court of Appeal in relation to the appellant's arbitration case. The appellant relied on r. 55 of the Rules to contend that the respondent cannot withhold the files which must be returned to the appellant. The respondent, on the other hand, contended that he has such a *lien* to retain the files for taxation of costs or for a settlement of costs with the solicitors for PDC. This is especially so when he had been discharged by the appellant to act for them citing *Hughes v. Hughes* [1958] Probate Division 224 CA and *In re Faithfull, And In re London, Brighton, And South Coast Railway Company* [1868] Equity Cases Vol VI 325.

[24] Rule 55 provides:

> Except by way of securing his first to a *lien*, an advocate and solicitor shall not otherwise withhold the client's papers to the detriment of the client.

[25] In *Hughes v. Hughes (supra)*, a petitioner in divorce proceedings discharged his solicitors and instructed a second solicitor, who obtained the papers in the suit from the first solicitors subject to his undertaking to respect their *lien* for costs. The petitioner subsequently discharged the second solicitor and instructed his present solicitors. On the application of the petitioner the registrar made an order that his second solicitor should deliver up the papers to the petitioner or his present solicitors within 14 days on the undertaking of the present solicitors to respect the *lien* of the

first and the second solicitors. From this order the second solicitor appealed. Wrangham J dismissed the appeal. On a further appeal, the English Court of Appeal in allowing the appeal held, *inter alia*, that:

> Held, that the general rule - that a solicitor who was discharged by his client during a civil action, otherwise than for misconduct, was entitled to retain, as against his client, any papers in the case in his possession until his costs had been paid - applied whether the client's papers were of any intrinsic value or not; and that while divorce proceedings *inter partes* were still civil litigation, and there was no reason why the rights of solicitors in such cases should differ from their rights in other cases. Accordingly, the second solicitor was entitled to his *lien*.

[26] Hodson LJ, in delivering the judgment of the Court of Appeal said at p. 227 as follows:

> There is no doubt that a solicitor who is discharged by his client during an action, otherwise than for misconduct, can retain any papers in the cause in his possession until his costs have been paid: see *In re Rapid Road Transit Co.* This rule applies, as the authorities show, whether the client's papers are of any intrinsic value or not, although it would seem that so far as the solicitor's working papers are concerned, where the work has not been paid for by the client, the solicitor would not be compelled to hand over his work unless it had been paid for, apart altogether from the *lien*.

[27] In the case of *In re Faithfull (supra)*, on the issue of solicitor's *lien* for costs, it was held:

> Although a solicitor who discharges himself cannot set up a *lien* for costs as a reason for not delivering up papers necessary to enable his client to proceed with pending matters in litigation to which they relate, yet a solicitor who has been discharged by the client may set up such *lien*, and will not be ordered to produce or deliver up to the client the papers on which he claims the *lien*, although his not doing so will embarrass the client in prosecuting or defending his claims. Such *lien* is a general one and extends to all costs due from the client to the solicitor.

[28] The principle of law quoted above *in tantum* is in line with r. 55 above which permits a *lien* to be claimed by an advocate and solicitor when it expressly provides such an exception to the withholding of client's papers to the detriment of the client when r. 55 uses the opening words of "except by way of securing his first to a *lien*, ..."

[29] The undisputed fact is that the respondent had been discharged by the appellant after the conclusion of the civil appeal in the Court of Appeal and it is also an undisputed fact that the respondent had not been paid his fees which are to derive from the taxed costs in the two cases that he had acted for the appellant and concluded *vide* the agreement (p. 57 Appeal Record). It is thus clear in law that respondent is entitled to a *lien* to retain the papers in the two files for taxation of costs still due to him after he had been discharged by the appellant as solicitor and when taxation has not been concluded. In the circumstances there is no obligation for the respondent to return the two files to the appellant. Hence, what the respondent did, ie, withholding the two files for the purposes of securing his costs whether by taxation or through a settlement ultimately, is within the permissible purview of the law and cannot be held to have breached r. 55 thereof. The respondent cannot be held to have breached r. 55 to justify any disciplinary action against him as complained by the appellant.

[30] Another undisputed fact shows that the respondent, upon the appellant's request, had within four days remitted to the appellant's new solicitors all relevant papers and/or documents in relation to the arbitration matter which ought to be the prime concern of the appellant in order that their arbitration matter could proceed without delay or interruption. There is no complaint relating to this aspect. When the appellant could proceed with their arbitration matter with all the relevant papers and/or documents having been duly supplied by the respondent, this court finds no prejudice being occasioned to the appellant for the respondent to retain the two files which involved concluded matters. There is therefore no detriment to the appellant.

[31] On the point raised by the appellant that the disciplinary board had not given its reasons for their decision, this court must disagree. Reading the board's decision as appeared in p. 87 of the Appeal Record, it is clearly stated that the Board had considered and determined that there is no merit in the appellant's complaint. To this court, citing that there is no merit in the appellant's complaint by itself suffices to be the reason given by the board though it is indeed a brief one. Nevertheless, the discretion is certainly vested on the Board as to how much they feel necessary to advance their grounds or otherwise for their decision or order. This court cannot intrude into the arena of the disciplinary board

to usurp their functions. The disciplinary board must be given the free hand to decide what is right and what is wrong of their own members. It is trite law that an appeal is a rehearing and even if the Board does not give any reason for arriving at a stated decision or order, this does not vitiate the power of this court to hear the appeal and arguments of both parties and to come to a finding whether the Board has arrived at a just decision or otherwise. On the facts of this case, with the appellant agreeing to the taxed costs being the respondent's fees and the respondent's right to claim a *lien* over the files for purposes of taxation of the costs being his legal fees as respondent had agreed to disclaim any other fees from the appellant, it is apparent that there is no further concern of the appellant over when and how the respondent should tax the costs or settle with PDC over the costs payable to him. In that sense, when the disciplinary board concluded that there is no merit in the appellant's complaint in that the respondent did not return the two files to the appellant, I find that the disciplinary board did not err in law and in fact in coming to that decision.

[32] Having considered this appeal and submissions of both parties and for reasons advanced above, I find no compelling reasons least to mention the most compelling reasons, to interfere with the decision of the disciplinary board. This appeal is therefore dismissed with costs of RM5,000 to the respondent.